IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1398 OF 2005

Mr. Irfeen Khan ...Applicant.

V/s

The State of Maharashtra
& Anr. ...Respondents.

Mr. Dinesh Tiwari for the applicant.
Mr. S.R. Shinde, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 31st March, 2005

P.C.:

1. Heard the learned Counsel for the applicant.

2. Applicant is challenging the order of issuance of process passed by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai on a complaint filed under sections 420, 406, 425 read with section 34 of the Indian Penal Code.

3. Respondent No.2 filed a complaint against the applicants in which it was alleged that she had received telephone call at her residence to come to a Hotel Leela Companski at Andheri. When she attended the meeting, video clips of various Holiday Resorts were shown and she was informed that she should attend the Office at Nariman Point with a blank cheque book

and an amount of Rs 1 lakh was accepted by cheque and Rs 30,000/- by cash and she was told that if she could collect more members, she would be paid Rs 30,000/- by way of commission and also she could visit different parts of the world for 10 years from 1997 to 2007. Accordingly, Membership Card was given to her. However, thereafter, the complainant approached the Office of the accused on several occasions. She came to know that they had shifted their office and every time she was told to meet them after one month. It is, therefore, alleged that the accused had cheated her by making false representation and by giving her bogus documents of Holiday Resorts. The Police did not take any steps and, therefore, a private complaint was filed.

4. The learned Counsel for the applicant has submitted that no offence can be said to have been made out under the provisions of sections 420, 406 and 425 of the IPC. He has submitted that there was no entrustment of property in any manner. Further, it is submitted that so far as the provisions of section 420 are concerned, none of the ingredients of the said section had been pleaded in the complaint. Same was the case in respect of section 425 of the Indian Penal Code. The learned Counsel for the applicant has taken

me through various documents annexed to the application.

5. I am unable to accept the submissions made by the learned Counsel for the applicant. The Trial Court had issued the process after it was prima facie satisfied with the averments made in the complaint and the documents which were filed. Applicant can always apply under section 245 of the Criminal Procedure Code for discharge at an appropriate stage. Application for quashing the criminal complaint is, therefore, dismissed. Liberty, however, is granted to the applicant to make an application for discharge under section 245 of the Criminal Procedure Code at an appropriate stage.

6. Accordingly, Criminal Application is disposed of.

V.M. KANADE, J.